

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
SEATTLE DIVISION

JOSEPH ANDREW HYLKEMA, a single  
man,  
  
Plaintiff  
v.

No. 07-CV-1679-RSL

RENEWED MOTION TO DISMISS  
COUNTERCLAIM

PALISADES COLLECTION, LLC, a  
Delaware limited liability  
corporation and TANYA ROBINSON,  
an individual,  
  
Defendants

**MOTION CALENDAR: FEB. 29, 2008**

**1. RELIEF REQUESTED**

1.1. Plaintiff renews his earlier request the Court enter an order dismissing Defendants' counterclaim herein on the grounds that Defendants have failed to amend their answer to cure its deficiencies.

**2. STATEMENT OF FACTS**

2.1. Plaintiff previously moved to dismiss Defendants' counterclaim by motion dated December 13, 2007 on the grounds of failure to state a cause of action pursuant to *Bell Atlantic v. Twombly*, \_\_\_ U.S. \_\_\_, 127 S. Ct. 1955, 167 L.Ed.2d 929 (2007)

1 and unripeness.

2 2.2. In response, Defendants interposed a motion for leave to  
3 amend the counterclaim to cure the defects noted in Plaintiff's  
4 motion.

5 2.3. By orders dated January 15, 2008, the Court granted  
6 Defendants' motion for leave to amend and denied Plaintiff's  
7 motion to dismiss. True and correct copies of the orders on  
8 these motions are attached hereto, respectively, as Exhibits "A"  
9 and "B".

10 2.4. Importantly, Plaintiff's original motion was not denied on  
11 the merits. Rather, it was essentially denied as moot because  
12 the Court gave the Defendants an opportunity to amend their  
13 answer to correct the *Twombly*-related deficiencies identified by  
14 Plaintiff.

15 Plaintiff alleges that the counterclaim fails to state a cause  
16 of action . . . [h]owever, defendants have filed a motion to  
17 amend to bolster the counterclaim, and the Court granted that  
18 motion . . .

19 *Exh. "A"*, at 1 lns. 19-22, citations omitted.

20 2.5. Defendants failed to bolster their counterclaim. The  
21 Court's order granting leave to amend gave Defendants 10 days to  
22 do so, or no later than January 25, 2008. No amended answer was  
23 ever filed.

24 2.6. Because they have failed to avail themselves of the Court's  
opportunity to correct the deficiencies in their answer  
(deficiencies they themselves tacitly acknowledged by asking for

1 leave to amend), Defendants' original counterclaim stands. The  
2 *Twombly*-related matters set forth in Plaintiff's original motion  
3 are therefore once again ripe for adjudication by this Court.

### 4 **3. STATEMENT OF THE ISSUES**

5 3.1. Should Defendants' counterclaim be dismissed for failure to  
6 state a cause of action and for failure to file an amended  
7 answer to cure the deficiencies?

8 **ANSWER: YES.**

### 9 **4. EVIDENCE RELIED UPON**

10 4.1. Plaintiff relies solely on this motion and the exhibits  
11 attached hereto, which consist solely of materials already on  
12 file with the Court.

### 13 **5. ARGUMENT**

#### 14 **Defendants' Counterclaim Fails** 15 **to State a Claim for Relief**

16 5.1. The Supreme Court, in *Bell Atlantic v. Twombly*, \_\_\_ U.S.  
17 \_\_\_, 127 S. Ct. 1955, 167 L.Ed.2d 929 (2007), recently tightened  
18 up the traditionally liberal Federal notice pleading standards.

19 5.2. Now, "a short and plain statement of the claim showing that  
20 the pleader is entitled to relief" as required by FRCP 8(a)(2)  
21 must include "more than labels and conclusions, and a formulaic  
22 recitation of the elements of a cause of action will not do."

23 *Twombly*, 127 S.Ct. at 1959.

24 5.3. In order to state a claim for relief, a pleader must

1 therefore state enough factual allegations to "raise a right to  
2 relief above the speculative level." *Id.* "[C]onclusory  
3 allegations without more are insufficient to defeat a motion to  
4 dismiss for failure to state a claim." *McGlinchy v. Shell Chem.*  
5 *Co.*, 845 F.2d 802, 810 (9th Cir. 1988).

6 5.4. The old standard promulgated in *Conley v. Gibson*, 355 U.S.  
7 41, 45-46, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957), under which a  
8 pleader could get by unless he could "prove no set of facts in  
9 support of claim that would entitle him to relief" has "earned  
10 its retirement" and is "best forgotten." *Twombly*, 127 S.Ct. at  
11 1968.

12 5.5. Here, Defendants' boilerplate "claim" makes no pretense of  
13 compliance with Rule 8. It is utterly devoid of any facts to  
14 support its conclusory, barebones assertion. The court should  
15 therefore dismiss the counterclaim with leave to re-plead with  
16 adequate factual support, if any the Defendants have.

## 17 6. PROPOSED ORDER

18 6.1. A proposed order granting the relief requested herein  
19 accompanies this motion.

20 DATED: February 4, 2008

21 S/Joseph A. Hylkema  
22 JOSEPH ANDREW HYLKEMA  
23 WSBA: N/A  
24 Plaintiff pro se

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**CERTIFICATE OF SERVICE**

I hereby certify that, on February 4, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

David A. Weibel, WSBA #24031  
Bishop White & Marshall, P.S.  
720 Olive Way Ste. 1301  
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Attorney for Defendants PALISADES and ROBINSON

And I certify that I have deposited into the mails of the United States, first class postage prepaid, a true and correct copy of the foregoing directed to the following non CM/ECF participants:  
N/A.

DATED: February 4, 2008

/S/Joseph A. Hylkema  
JOSEPH ANDREW HYLKEMA  
WSBA: N/A  
Plaintiff pro se